

## **Prisons and Courts Bill**

### **Equalities Statement: The online procedure in courts and tribunals**

#### **Policy change summary**

1. This Equality Statement considers the impact of the Government's proposals to legislate to create a new online procedure and a new online procedure rules committee which will, notionally, cover civil, family and tribunal proceedings.
2. Ministers have agreed to establish a new and simpler pathway to justice provided by a new online procedure which should be capable of applying to civil, family and tribunal proceedings from the outset. It is intended that this approach will significantly improve user experience and reduce costs by providing an online service which is simple to navigate.

#### **Equality duties**

3. Section 149 of the Equality Act 2010 ("the Act") requires Ministers and the Department, when exercising their functions, to have 'due regard' to the need to:
  - I. eliminate unlawful discrimination, harassment, victimisation and any other conduct prohibited by the Act;
  - II. advance equality of opportunity between different groups (those who share a relevant protected characteristic and those who do not); and
  - III. foster good relations between different groups (those who share a relevant protected characteristic and those who do not).
4. In carrying out this duty Ministers and the department must pay "due regard" to the nine "protected characteristics" set out in the Act, namely: race, sex, disability, sexual orientation, religion and belief, age, marriage and civil partnership, gender reassignment, pregnancy and maternity.

#### **Equality considerations**

5. Consideration has been given to the impact of the proposed legislative changes and the introduction of an online procedure and an online rules committee on court users against the statutory obligations under the Act. These are outlined below.
6. Although the actual court rules which will support the new online procedure will be a matter for the online procedure rules committee we have considered the impact on equality of any potential components of any new online procedure. In particular the focus on digitisation and opening up opportunities for conciliation through the expansion of the mediation process and making more efficient use of alternatives to formal court hearings. For example through more extensive use of telephone and video link hearings.
7. Although the online procedure will apply, notionally to proceedings across civil, family and tribunals we expect that the online procedure will build on existing processes in the civil justice system in the first instance. This is, therefore, the jurisdiction where most equality impacts have been considered. Automation of the initial stages of the court process for applications already exists in some areas of civil justice. For example, bulk automated claims and money claims online, and possession. Additionally a small claims mediation service is already

run by HMCTS in Northampton at the County Court Business Centre. It handles 2000 referrals monthly resulting in 1300 appointments, with a settlement rate of 60%. Small claims mediation is, therefore, already an established part of the small claims process and seeks to help parties resolve disputes without the need to go to court.

8. As part of the proposed online procedure for civil money claims we are considering options for building on the existing digital approach and the small claims mediation service. We believe that this will have a positive equalities impact as it enables parties to seek to resolve their case without the inconvenience of attending court and could offer a quicker and more effective route to resolving disputes. There will always be claims that are not suitable for small claims mediation and we envisage that parties will have the opportunity to opt out of the process if there are concerns about whether mediation is the right approach given the characteristics of individuals.
9. In addition cases are filtered out by an administration team prior to small claims mediation. The administration team check details of potential users against a checklist of suitability, giving an overview of the mediation session and seeking any queries or concerns about the process or whether there are any positive adjustments that are required. The options available if an individual is hard of hearing for example would be a face to face mediation held at a local court. If advised that an appointment date had fallen on a religious holiday an alternative date would be offered. Administration staff entire have all completed the Civil Service learning courses listed below;
  - I. Equality and diversity essentials
  - II. Disability awareness, and;
  - III. Unconscious bias
10. The proposed online procedure rules committee will comprise a core committee supported by sub-committees to provide additional expertise for each jurisdiction. The rule committee should be no larger than is necessary to achieve this purpose. Accordingly, with regard to the rules committee, we consider that the committee should consist of 5 members, namely—
  - I. Two judges, including one judge of the senior courts to be appointed by the Lord Chief Justice;
  - II. One lawyer; and
  - III: Two lay persons, one with experience in and knowledge of the lay advice sector, to be appointed by the Lord Chancellor.
11. The purpose of the new rule committee will be to provide new simple rules for the online procedure drafted specifically for court users who may not have legal representation. We envisage that the lay members of the committee will make sure that the needs of all court users are taken into consideration when establishing the new rules for any future online procedure. The appointment of the lay members will be through the public appointments procedure and fair and open competition.

Direct discrimination

12. Our assessment is that the proposed online procedure and online rules committee would not be directly discriminatory within the meaning of the Act. We will provide support which will apply equally to all service users who need help to access digital services. We do not consider that assisted digital support would result in people being treated less favourably because of their protected characteristic.

#### Indirect discrimination

13. We do not believe that the online procedure or online rules committee will result in any indirect discrimination against users of the justice system. The approach is designed to make the process easier for all court users by removing unnecessary complexity and making rules easier to follow for non-lawyers. It seeks to assist parties in resolving their disputes more speedily and efficiently. We are aware that there may be some users disadvantaged by the move to a more digital service. As a result we will provide these users with support designed to prevent those who have difficulty engaging with digital services from being excluded from them.
14. Overall however, the changes will improve accessibility from the current model, as new online tools improve navigation and advice, reduce reliance on paper (allowing people to get information in formats more suitable to them), reduce reliance on representation (allowing justice to be accessible to those populations who may not have the money to do so – which is not standard across protected characteristics).
15. Where we are introducing automation into the system, as with the online procedure, this involves little change for the end user except an increase in speed and certainty. For those engaging with the system there will continue to be support to understand the impact of decisions – in fact this may improve for many users, as the design of digital services allows us to ensure information is understood before progressing.
16. Overall, we do not believe that the proposal will result in any indirect discrimination against users of the justice system since it is not considered likely to result in any particular disadvantage for people with protected characteristics. The approach is designed to make the process easier for all court users by offering other options to significantly improve user experience and reduce user costs by making an effective form of justice more readily available. Furthermore, we consider the proposals are a proportionate means of achieving the legitimate aim of supporting citizens to present their own cases simply and to obtain justice more swiftly whilst reducing the costs of the courts and tribunals to taxpayers.

#### Discrimination arising from disability and duty to make reasonable adjustments

17. The proposal to implement Assisted Digital support for future online and digital procedures is a reasonable adjustment in itself. The assisted digital services will address the digital access needs of individuals who are unable to engage with online services, ensuring they will not be denied access to

justice, and will mitigate any risk of discrimination arising from digitising our services.

#### Harassment and victimisation

18. We do not consider there to be a risk of harassment or victimisation as a result of the online procedure and online rules that will be implemented. We are aware that mediation, for example, may not be suitable for all cases and we will put steps in place to make sure that all cases are dealt with fairly. The points raised in paras 4.5 show how this could be undertaken effectively.

#### Advancing equality of opportunity

19. Overall, there are some key features that we think will contribute to making the justice system more accessible and will therefore advance equality of opportunity. Improved digital working will reduce reliance on representation, allowing those who cannot afford legal advice to make better use of the system to solve their disputes or understand their rights. Improved online navigation will mean that those who currently struggle to make sense of the courts will be able to understand how to enforce their rights or contest a dispute better.
20. Reducing reliance on geography through digitisation – reducing the need to travel or do things in person, making life easier for many people with disabilities, and providing them with online support for the first time with staff trained to understand and cater for their needs.

#### Fostering good relations

21. Consideration has been given to how the online procedure impacts on the duty to advance the fostering of good relations between people who have a protected characteristic and those who do not. We have considered how the proposals might impact on this limb of the duty but do not think there are any particular implications for this proposal.

#### Mitigation

22. Our assessment of equality impacts is that the implementation of an online procedure and online rules committee will not result in any direct discrimination of courts and tribunal users with protected characteristics. We believe that the assisted digital services we intend to put in place as set out in this statement could be used by some groups with protected characteristics more than the general population. As the assisted digital support will be designed to assist all users who have difficulty interacting with the justice system digitally, not just those with protected characteristics, this is not viewed as problematic.

#### Equality Impact analysis

23. While we acknowledge that the scope of the proposed online procedure and online rules committee covers civil, family and tribunals the focus of our analysis has been on users of the civil courts only. This is because this is the area where we see early benefit from the implementation of the online

procedure. Due to the limitations in the data in some cases, we have only been able to look at the protected characteristics of individual applicants bringing proceedings in the County Court.

24. Therefore, using the data that is available from the civil court user survey<sup>1</sup>, we have looked at the characteristics of a representative sample of individual court users<sup>2</sup>. We have then compared the results with all adults aged 16 and above – see Table 1 below. The following findings were found to be statistically significant:

- I. **Sex:** Male court users appear to be over-represented among the affected groups when compared to all adults aged 16 and over.
  - II. **Age:** Individuals aged between 45 and 74 years old are also over-represented.
  - III. **Race:** Individuals from an Asian or Asian British background, and those from a Black or Black British background are over-represented.
  - IV. **Disability:** Those with physical or mental health problems appear to be under-represented.
25. Finally, as the equality duty is an ongoing duty, we will continue to monitor and review these proposals for any potential impacts on persons with protected characteristics and make sure that access to justice is maintained.

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<sup>1</sup> <https://www.gov.uk/government/publications/civil-court-user-survey-2014-to-2015>

<sup>2</sup> These include individuals who commence money claims and possession claims in the County Court, and exclude businesses.

<b>Table 1: Demographic profile of individual claimants</b>		
	<b>All claimants</b>	<b>Comparison group: All adults aged 16 and over</b>
	<b>%</b>	<b>%</b>
<b>Sex</b>		
Male	56	47
Female	44	53
<b>Age</b>		
16 to 24	2	15
25 to 34	15	15
35 to 44	20	18
45 to 54	25	17
55 to 64	20	15
65 to 74	14	11
75 and over	5	9
<b>Race</b>		
White	80	90
Asian/Asian British	14	5
Black//Black British	4	2
Mixed/Chinese/Other	3	3
<b>Health</b>		
Any physical or mental health problem	25	36
<b>Annual income (claimant +partner)</b>		
Under £10,000	16	n/a
£10,000 - £12,999	9	n/a
£13,000 - £14,999	4	n/a
£15,000 - £20,999	16	n/a
£21,000 - £39,999	30	n/a
£40,000 - £59,999	12	n/a
£60,000 - £79,999	6	n/a
£80,000 or over	7	n/a
<b>Receipt of state benefits</b>		
Any	24	n/a

None	76	n/a
<i>Bases: All claimants</i>		
<i>Gender</i>	2,105	
<i>Age</i>	2,101	
<i>Ethnicity</i>	2,009	
<i>Income</i>	1,742	
<i>Benefits</i>	1,861	
<i>Health</i>	2,048	

*Sources:*

Data on claimants from the *Civil Court User Survey 2014/15 - Individual claimants*

Data on gender, age and ethnicity of the adult population from  
Census data 2011

Data on health of adult population from  
<http://www.ons.gov.uk/ons/rel/ghs/opinions-and-lifestyle-survey/adult-health-in-great-britain--2013/index.html>

This publication was archived in June 2017.